

Calendar No. 1026

91ST CONGRESS }
2d Session }

SENATE

{ REPORT
No. 91-1022

DONAL N. O'CALLAGHAN

JULY 15, 1970.—Ordered to be printed

Mr. BURDICK, from the Committee on the Judiciary,
submitted the following

REPORT

[To accompany S. 2755]

The Committee on the Judiciary, to which was referred the bill (S. 2755) for the relief of Donal N. O'Callaghan, having considered the same, reports favorably thereon with an amendment and recommends that the bill, as amended, do pass.

AMENDMENT

On page 1, line 6, strike "of \$1,650.58" and insert in lieu thereof "to which he would be entitled under 5 U.S.C. 5724(a) (4) and the regulations issued thereunder without regard to section 4.1d of the Bureau of the Budget Circular No. A-56, Revised, October 12, 1966".

PURPOSE OF AMENDMENT

The amendment is inserted at the request of the Comptroller General and has the effect of requiring the claimant to prove his loss was the amount claimed in the bill as introduced.

PURPOSE

The purpose of the bill is to authorize and direct the Secretary of the Treasury to pay, out of any money in the Treasury not otherwise appropriated, to Donal N. O'Callaghan of Carson City, Nev., the sum of his losses on a Government move. Such sum represents the amount of expenses the said Donal N. O'Callaghan incurred in selling his resi

dence in Carson City, Nev., incident to his transfer in June 1967, as an employee of the Office of Emergency Preparedness, from one location to another for the convenience of the Government, the said Donal N. O'Callaghan having been unable, due to circumstances beyond his control, to comply with a Government regulation permitting reimbursement of such expenses only in the case of sales completed within 1 year after transfer.

STATEMENT

Public Law 89-516 provides, in part, that under regulations promulgated by the President, funds available to the departments for their administrative expenses shall be available for the reimbursement of all or part of the expenses of the sale and acquisition of their residences (or the settlement of unexpired leases) by certain Federal officers and employees transferred to new locations incident to their employment. Such reimbursement is made pursuant to regulations promulgated for the President by the Bureau of the Budget.

Bureau of the Budget regulations (section 4.1 of Circular No. A-56) permit such reimbursement only when "the settlement dates for the sale and purchase or lease termination transactions for which reimbursement is requested are not later than 1 year after the date on which the employee reported for duty at the new official station, except that an appropriate extension of time may be authorized by the head of the department or his designee when settlement is necessarily delayed because of litigation."

Evidently the pendency of litigation is the only valid reason for granting extensions of time.

Mr. O'Callaghan entered on duty as regional director of his agency on June 1, 1967, at Santa Rosa, Calif., leaving his family at his last official residence in Carson City, Nev., where efforts were underway to sell the subject dwelling. On January 30, 1968, Mr. O'Callaghan moved his family to Santa Rosa, and left sales efforts to a real estate agency.

By letter dated November 7, 1968 the regional director of the Federal Housing Administration, supports Mr. O'Callaghan's claim that homes in Carson City, were "very difficult to sell during the period of June 1967 to August 1968." He states that "our records show that very few new homes were built and sold in the area during this time. Likewise, the market was very slow for the sale of existing homes."

When Mr. O'Callaghan finally sold his house on August 14, 1968, he did so by taking a down payment of only \$700 and a second mortgage of \$2,588.48, an arrangement which Mr. O'Callaghan states worked a hardship on him but which nevertheless, had to be made in view of rental payments and mortgage payments he was making on his new and old residences.

Mr. O'Callaghan did all he could to comply with the regulations at considerable hardship to his financial situation. Under the foregoing circumstances the committee believes the bill is meritorious and accordingly recommends favorable consideration of S. 2755, as amended.

Attached hereto and made a part hereof are the substantiating papers.

COMPTROLLER GENERAL OF THE UNITED STATES,
Washington, D.C., September 3, 1969.

B-165875.

HON. JAMES O. EASTLAND,
Chairman, Committee on the Judiciary,
U.S. Senate.

DEAR MR. CHAIRMAN: We refer to your letter of August 14, 1969, by which you request our report on the bill S. 2755 for the relief of Donal N. O'Callaghan.

The bill would authorize and direct the Secretary of the Treasury to pay Mr. O'Callaghan \$1,650.85 to reimburse him certain expenses he incurred in the sale of his residence at his old official station in connection with his transfer in June 1957 from Carson City, Nev., to Santa Rosa, Calif., as an employee of the Office of Emergency Preparedness, Executive Office of the President.

Mr. O'Callaghan's claim for reimbursement of the expenses in question was presented to us for advance decision by the Office of Emergency Preparedness. In the decision of February 27, 1969, B-165875, a copy of which is enclosed, we determined that the voucher could not properly be certified for payment because Mr. O'Callaghan had not sold the residence in question within 1 year from the effective date of his transfer as was required by section 4.1d of Bureau of the Budget Circular No. A-56, revised October 12, 1966. As was indicated in the cited decision, we do not have authority to permit an exception to the requirements of section 4.1d for reasons other than specified therein even though the sale of the residence was delayed through no fault of the employee.

Regarding the amount stated in S. 2755 (\$1,650.85), we do not have information available in our Office which would enable us to determine whether that amount would properly have been allowable had Mr. O'Callaghan sold his residence within the 1 year allowed. Therefore, we suggest that the words "to which he would be entitled under 5 U.S.C. 5724a(a)(4) and the regulations issued thereunder without regard to section 4.1d of Bureau of the Budget Circular No. A-56, revised, October 12, 1966" be inserted in lieu of the words "of \$1,650.85" as they appear on line 6, page 1 of S. 2755.

Ordinarily, we do not favor legislation which authorizes payments to be made to an employee without regard to the limitations imposed by law and regulation because such legislation is preferential in nature in that it favors the employee involved over other employees whose claims for payment under similar circumstances must be disallowed. The claims of several employees for reimbursement of otherwise allowable costs incurred in the sale and purchase of residences have been disallowed by reason of the 1-year limitation contained in the section 4.1d of Circular No. a-56, of October 12, 1966. However, the question of whether the facts and circumstances of a particular case are of such a nature as to warrant relief legislation is a matter of policy for determination by the Congress.

Sincerely yours,

R. F. KELLER,
 (For the Comptroller General of the United States.)

Enclosure.

DEPARTMENT, BUREAU, OR ESTABLISHMENT Executive Office of the President VOUCHER NO.
Office of Emergency Planning

Office of Emergency Planning		PAID BY	
PAYEE'S NAME D. N. O'Callaghan			
MAILING ADDRESS Office of Emergency Planning Region Seven Santa Rosa, CA 95403			
OFFICIAL DUTY STATION Santa Rosa, California			
RESIDENCE Santa Rosa, California		CHECK NO.	
FOR TRAVEL AND OTHER EXPENSES FROM (DATE) TO (DATE)			
TRAVEL ADVANCE Outstanding \$ -----			
CASH PAYMENT RECEIVED:			
APPLICABLE TRAVEL AUTHORIZATION(S) NO. 504 DATE 1/8/68			
Amount to be applied Balance to remain outstanding \$			
(DATE)		(SIGNATURE OF PAYEE)	

TRANSPORTATION REQUEST NUMBER	AGENT'S VALUATION OF TICKET	INITIALS OF CARRIER ISSUING TICKET	MODE, CLASS OF SERVICE, AND ACCOM- MODATIONS *	DATE ISSUED	POINTS OF TRAVEL	
					FROM-	TO-

•• Certified correct. Payment or credit has not been received.

16 October 1968
(Date)

W. M. O'Callaghan
(Signature of Payee)

AMOUNT:

[illegible]

1650	85
------	----

APPROVED (Supervisory and other approvals when required)

William S. Rice, Director of Administration

DIFFERENCES:

NEXT PREVIOUS VOUCHER PAID UNDER SAME TRAVEL AUTHORITY		
VOUCHER NO.	D.O. SYMBOL	DATE (MONTH-YEAR)

Total verified correct for charge to appropriation.(s)

Certified correct and proper for payment:

Applied to travel advance (appropriation symbol)

(Date)

(Authorized Certifying Officer)

NET TO

TRAVELER

ACCOUNTING CLASSIFICATION (Appropriation symbol must be shown; other classification optional)

* Abbreviations for Pullman accommodations: MR, master room; DR, drawing room; CP, compartment; BR, bedroom; DSR, duplex single room; RM, roomette; DRM, duplex roomette; SOS, single occupancy section; LB, lower berth; UB, upper berth; LB-UB, lower and upper berth; S, seat.

**** FRAUDULENT CLAIM**—Falsification of an item in an expense account works a forfeiture of the claim (28 U.S.C. 2514) and may result in a fine of not more than \$10,000 or imprisonment for not more than 3 years or both (18 U.S.C. 287; *id.* 1001).

SCHEDULE OF EXPENSES AND AMOUNTS CLAIMED

PREVIOUS TEMPORARY DUTY (Complete these blocks only if in travel status immediately prior to period covered by this voucher and if administratively required)

[illegible]

U. S. GOVERNMENT PRINTING OFFICE : 1960 OF-352891

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT,
FEDERAL HOUSING ADMINISTRATION,
Reno, Nev., November 7, 1968.

To Whom It May Concern:

Mr. D. N. O'Callaghan has asked of this office an expression of the condition of the single-family housing market in the Carson City, Nev., area during the period June 1967 to August 1968. Apparently Mr. O'Callaghan experienced considerable difficulty in selling his home during this period.

This letter will serve to testify to the fact that homes in the Carson City area were very difficult to sell during the period of June 1967 to August 1968.

Our records show that very few new homes were built and sold in the area during this time. Likewise, the market was very slow for the resale of existing homes. This fact necessitated the taking of second trust deeds by sellers in order to sell their homes.

Sincerely yours,

JAMES E. BAKER,
Director.

Deposit Receipt

Carson City, Nevada August 9th, 1968

Received from MOL NATION & BONICO - Husband & Wife.

herein called Buyer, the sum of Twenty three thousand & no/100 -- Dollars

Dollars (\$ 23,000.00) evidenced by cash ☒, personal check ☐, cashier's check ☐, or

as deposit on account of purchase price of Carson City - address 1636 HOLLY DRIVE. Dollars (\$ 23,000.00).

for the purchase of property, situated in Carson City - address 1636 HOLLY DRIVE. County of Ormsby, Nevada, described as follows:

Lot 1036 - HOLLY DRIVE, Carson City, Nevada.

Price - \$23,000.00.

Loan (approx) - \$19,950.00.

23,000.00.

Down payment - 700.00.

will be a 2nd, 23,000.00. payable at 250.00. per month including 7% interest

Buyer shall have the right to pay off the 2nd, in full at any time with out penalty.

Buyer will deposit in escrow with Nevada Title Guaranty Co. 23,000.00. for their part of the closing costs, at close of escrow.

Sellers will remove all of the curtains, drapes, curtain rods and also place screen.

Buyers will deposit in Escrow \$24.00. for 1/2 of August payment on the house.

Sellers said over the telephone that it was alright to give the buyers the key to the house this date.

Buyers are to assume the existing loan of approx \$19,950.00. & will pay same payment.

(1) If Buyer fails to pay the balance of said purchase price, or to complete said purchase as herein provided, the amounts paid hereon may be retained by Seller as consideration for the execution of this agreement by Seller.

(2) Title is to be free of liens and encumbrances other than those set forth herein. Title subject to Restriction of record.

Evidence of title shall be a FIRST AMERICAN TITLE INSURANCE & TRUST COMPANY, headed coverage form policy of title insurance issued through NEVADA TITLE GUARANTY COMPANY, to be paid for by Seller.

(3) Taxes, premiums on insurance acceptable to Buyer, rents, interest and other expenses of said property shall be pro-rated as of the date of transfer of title or delivery of agreement of sale, the amount of any bond or assessment which is a lien shall be paid by Seller.

(4) Possession of said property to be delivered to Buyer on closing escrow ☐, or not later than Sellers gave me permission by phone to give the key to the buyers.

(5) This offer shall be deemed revoked unless accepted in writing within was accepted by phone days after date hereof, and such acceptance is communicated to Buyer within said period.

(6) Time is of the essence of this contract, but Broker may, without notice, extend for a period of not to exceed one month the time for the performance of any act hereunder, except the time for the acceptance hereof by Seller and date of possession.

A & A Realty Co.

Address 2110 - A, Carson City, Nev. Telephone 882-2134

The undersigned Buyer offers and agrees to buy the above described property on the terms and conditions above stated and acknowledges receipt of a copy hereof.

Address Box 7, Lorington, Nev.

Telephone Unico - Nelson

Buyer to take title in name of MOL NATION & BONICO as nation - husband & wife,

(Show Marital Status and Tenancy) as joint tenants.

APPROPRIATE

The undersigned accepts the above offer and agrees to sell said property on the terms and conditions set for

The undersigned agrees to the Buyer's name and amount of the undersigned's share of the sum of

One thousand three thousand & no/100 Dollars (\$ 1,300.00.)

one-half of the amount paid by Buyer in the event the same is forfeited, provided such one-half shall not exceed the full amount of said commission.

The undersigned acknowledges receipt of a copy hereof.

Seller _____ Date _____ 19____

Address _____

Telephone _____

SELLER'S COPY

Keep this copy

BRANCH OFFICES:
111 W. FRONT ST.
CARSON CITY, NEVADA
PHONE: 882-1651

ROUND HILL VILLAGE
ZENITH COVE, NEVADA
PHONE: 523-2458
822-4059

518 IDAHO STREET
ELKO, NEVADA
PHONE: 728-7101

ESCROW STATEMENT

NEVADA Title GUARANTY COMPANY

HOME OFFICE: 90 COURT STREET, P.O. BOX 1290 RENO, NEVADA
PHONE 323-1811

WARD BUILDING
TOWHEE, NEVADA
PHONE: 407-6776

123 N. MAIN ST.
YERINGTON, NEVADA
PHONE: 463-3331
832-5014

30322.02

OUR NO.:

O'Callaghan - Macleann

October 2, 1968

DATE:

AJ

ESCROW OFFICER:

Brief Description	Lot 59 Sunland Vista #3	CHARGES	CREDITS
Sales Price			\$23,000.00
By assumption of payments on Montgomery Street			
Mortgage Co. loan - Balance as of 8-1-68		\$19,711.52	
By 2nd Deed of Trust and Note in favor of Sellers.		2,588.48	
Proportion of Sewer Assessment to 8-15-68		4.25	
August payment - $\frac{1}{2}$ paid by Buyers			84.00
advanced by J. D. Smith for cleaning expenses		36.80	
broker's Commission to R & S Realty		1,380.00	
Conveyancing charges ($\frac{1}{2}$)		12.50	
Title Insurance Premium		153.00	
Escrow fee (ptn)		49.00	
PTT Stamps (<i>for Promissory Note Transfer</i>)		3.85	
Loan Assumption fee - Montgomery Street Mortgage ($\frac{1}{2}$)		12.50	
I.C. Set up fee ($\frac{1}{2}$) (<i>Installment Collection Document</i>)		5.00	
deposit 10-2-68			872.50
		\$23,956.90	\$23,956.90

ESCROWS CANNOT BE CLOSED UNTIL ALL BALANCES DUE HAVE BEEN PAID

NEVADA TITLE GUARANTY Co.,
Reno, Nev., October 2, 1968.

Mr. and Mrs. DONAL N. O'CALLAGHAN,
Santa Rosa, Calif.

DEAR MR. AND MRS. O'CALLAGHAN: Enclosed herewith please find the following:

1. Escrow Statement in connection with your sale of Lot 59 of Sunland Vista Subdivision No. 3, Carson City, Nevada, original and one certified copy;
2. Copy of Promissory Note and Deed of Trust for \$2,588.48 in your favor;

3. Copy of Instalment Collection Instructions;
4. Copy of Assignment and Assumption Agreement on Montgomery Street Corporation loan;
5. Copy of Assignment of Trust Funds;

The original note and deed of trust executed by Mr. and Mrs. Matlean in your favor will be held in our collection department and all payments on this second deed of trust and note will be handled through said department.

We thank you for this opportunity to be of service to you.

Very truly yours,

AGNES JOHNSTON,
Escrow Officer.

ASSIGNMENT AND ASSUMPTION AGREEMENT

To: Montgomery Street Mortgage Corp.

I. For value received the undersigned hereby transfer and assign to Mel Matlean and Denise L. Matlean, purchasers, all of the interest of the undersigned in any refunds or credits which may at any time be available by reason of the provisions of the deed of trust described in the following described agreement or the contract of insurance thereof by the Federal Housing Administration.

Dated: August 14, 1968.

DONAL N. O'CALLAGHAN,
Maker-Seller.

CAROLYN R. O'CALLAGHAN,
Maker-Seller.

To: Montgomery Street Mortgage Corp.

II. The undersigned having heretofore assumed or being the maker(s) or guarantor(s) of the promissory note and deed of trust described in the following Assumption Agreement, Section III below in consideration of the execution and acceptance thereof, hereby jointly and severally agree that the liability of the undersigned on the said note shall not be affected thereby. The undersigned further jointly and severally waive presentation demand of payment, protest and notice of non-payment of the said indebtedness and expressly consent to delay or change in the time of payment of principal or any installment thereof or in the amount of one or more installments on performance of any of the provisions of the deed of trust, to partial releases of the property covered by the said deed of trust, to the acceptance of additional security for said note and the reduction of the interest rate or principal thereof, and to subsequent assumption agreements all without notice to the undersigned and without affecting the liability of the undersigned thereon.

Dated: August 14, 1968.

DONAL N. O'CALLAGHAN,
Original Maker.

CAROLYN R. O'CALLAGHAN,
Original Maker.

To: Montgomery Street Mortgage Corp.

III. The undersigned having acquired title to that certain real property described in a deed of trust dated October 14, 1963 executed by Donal N. O'Callaghan and Carolyn N. O'Callaghan, his wife, which deed of trust was given to secure a promissory note of even date in the principal sum of \$21,300.00, and having agreed as part of the purchase price of said property to assume and pay the indebtedness evidenced by the said promissory note (or as the same may be modified or extended) and to be bound by and to perform all of the covenants of the said deed of trust at the time and in the manner provided therein. The undersigned further agrees that the property described in the said deed of trust shall be held as security for any and all indebtedness of the undersigned whether now existing or hereafter created.

Dated: August 14, 1968.

MEL MATLEAN,
Purchaser.
DENISE L. MATLEAN.
Purchaser.

Instructions to Branch:

- (a) The immediate sellers should sign Sections I and II.
- (b) Guarantors, if any, and original makers if other than immediate sellers should then sign Section II, except that if the obligation is on an FHA or VA form of note and original makers are not readily available, their signatures need not be obtained. (FHA and VA note forms contain waivers and consent to extensions). In all other cases signature of original maker should always be obtained (before obtaining signatures of purchasers) except that when makers have once signed this form, it is not necessary that they sign subsequent assumption agreements.
- (c) Purchasers should then sign Section III.

ASSIGNMENT OF TRUST FUNDS

We, the undersigned, being the mortgagors of the real property located at 1632 Molly Drive, Carson City, Nevada for value received hereby transfer all of our rights, title and interest in any and all trust funds now held by Montgomery Street Mortgage Corporation pertaining to the mortgage loan covering the above described property, said loan specifically identified as Loan No. 17-35396 on the books of Montgomery Street Mortgage Corporation.

DONAL N. O'CALLAGHAN,
CAROLYN R. O'CALLAGHAN.

Date August 14, 1958.

PROMISSORY NOTE

\$2,588.48

CARSON CITY, NEVADA, *August 14, 1968.*

For value received, we, Mel Matlean and Denise L. Matlean, husband and wife, jointly and severally promise to pay to the order of Donal N. O'Callaghan and Carolyn R. O'Callaghan, husband and wife as joint tenants with right of survivorship and not as tenants in common, at Nevada Title Guaranty Company, 90 Court Street, Reno, Nevada, or such place as the legal holder of this note shall designate in writing, in coin or currency which at the time or times of payment shall be legal tender for the payment of public and private debts in the United States of America, the sum of two thousand five hundred eighty eight and 48/100 dollars (\$2,588.48) with interest at the rate of seven percent (7%) per annum from the date of the recording of the Deed of Trust securing payment of this note, said principal and interest to be paid in the following manner:

The sum of \$30.00 on the 18th day of October, 1968, and a like sum of \$30.00 on the 18th day of each and every calendar month thereafter until the balance of principal and interest shall be fully paid. Each and every of said installment payments shall be applied first to the payment of interest then due on the decreasing balances of the principal sum, and then to the reduction of the principal sum.

In addition to the payment on account of principal above provided, privilege is reserved to pay on any instalment date an amount equal to the principal portion of one or more next successively ensuing instalments.

Contemporaneously with, and in addition to, each and every installment payment made pursuant to the terms of this note, we hereby promise to pay to Nevada Title Guaranty Company one-half of its fee for acting as instalment collector pursuant to the terms of this note. The remaining one-half of said instalment collection fee shall be deducted from the moneys payable to the holder of this note.

This note is secured by a Deed of Trust of even date herewith executed by the undersigned as Trustors to Nevada Title Guaranty Company as Trustee for payees above named as Beneficiaries.

The undersigned promise and agree that in case of default in the payment of any instalment of principal and/or interest as provided herein, or in case of failure to perform any covenant in the deed of trust securing this note, or in the event of failure to pay any instalment of principal and/or interest in accordance with the terms of any note secured by a deed of trust having priority over the deed of trust securing this note, or in the event of failure to perform any covenant contained in said prior deed of trust to be performed by the trustor named therein, or in the event that any maker of this note shall make a general assignment for the benefit of creditors or be adjudged a bankrupt, then upon the happening of any one of such events the whole sum of principal and interest which shall then remain unpaid shall become forthwith due and payable although the time of maturity as expressed in this promissory note shall not have arrived.

The undersigned promise and agree that in case any suit or legal or equitable action is instituted to collect this note or any portion thereof,

or any interest thereon, to pay all costs and expenses and such additional sum as the Court may adjudge reasonable as an attorney's fee in said suit or action, the same to be included in any judgment obtained on this note.

The makers and endorsers severally waive presentment for payment, demand, notice, protest and notice of protest, diligence and non-payment of this note, and all defenses on the ground of any extension of time of payment that may be given by the holder or holders to them or either of them, and /or any other defenses which they or either of them might or could have.

DENISE L. MATLEAN.
MEL MATLEAN.

No. 30332.02

DEED OF TRUST

This deed of trust, made this 14th day of August, 1968, by and between Mel Matlean and Denise L. Matlean, husband and wife, Trustors, and Nevada Title Guaranty Company, a corporation organized and existing under and by virtue of the laws of the State of Nevada, Trustee for Donal N. O'Callaghan and Carolyn R. O'Callaghan, husband and wife as joint tenants with right of survivorship and not as tenants in common, Beneficiaries,

Witnesseth:

That Trustor does hereby grant, bargain, sell, convey and confirm unto Trustee in trust with power of sale, all that certain property in the City of Carson City, County of Ormsby, State of Nevada, more particularly described as follows: Lot 59, as shown on the map of Sunland Vista Subdivision, Unit No. 3, filed in the office of the County Recorder of Ormsby County, Nevada, on August 7, 1962.

And, also, all the estate, interest, homestead or other claim, as well as in equity, which said Trustor now has or many hereafter acquire in and to said property, together with all easements and rights of way used in connection therewith or as a means of access thereto, and all and singular the tenements, hereditaments and appurtenances thereunto belonging or in anywise appertaining, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof.

To have and to hold the same unto the said Trustee and its successors, for the purpose of securing:

Payment of an indebtedness in the sum of \$2,588.48, evidenced by a promissory note of even date herewith, with interest thereon, according to the terms of said note, which note by reference is hereby made a part hereof, executed by Trustor and delivered to Beneficiary, and payable to the order of Beneficiary, and any and all extensions or renewals thereof; payment of such additional sums with interest thereon, as may be hereafter loaned by the Beneficiary to Trustor when evidenced by the promissory note or notes of Trustor; payment of all other sums with interest thereon becoming due or payable under the provisions hereof to either Trustee or to Beneficiary, and the performance and discharge of each and every obligation, covenant and agreement of Trustor herein contained or herein adopted by reference.

And this Indenture Further Witnesseth:

First: Trustor promises and agrees to pay when due all claims for labor performed and materials furnished for any construction, alteration or repair upon the above described premises; to comply with all laws affecting said property or relating to any alterations or improvements that may be made thereon; not to commit or permit waste thereon, not to commit, suffer or permit any acts upon said property in violation of any law, covenant, condition or restriction affecting said property.

Second: Trustor covenants to keep all buildings that may now or at any time be on said property during the continuance of this trust in good repair and insured against loss by fire, with extended coverage endorsement, in a company or companies authorized to issue such insurance in the State of Nevada, and as may be approved by Beneficiary, for such sum or sums as shall equal the total indebtedness secured by this Deed of Trust and all obligations having priority over this Deed of Trust and shall be payable to Beneficiary to the amount of the unsatisfied obligation to Beneficiary hereby secured, and to deliver the policy to Beneficiary or to collection agent of Beneficiary, and in default thereof, Beneficiary may procure such insurance and/or make such repairs, and expend for either of such purposes such sum or sums as Beneficiary shall deem proper.

Third: The following covenants Nos. 1, 3, 4 (interest 10%), 5, 6, 7 (counsel fees 10%), 8 and 9 of Nevada Revised Statutes 107.030, are hereby adopted and made a part of this Deed of Trust.

Fourth: Trustor agrees to pay any deficiency arising from any cause after application of the proceeds of the sale held in accordance with the provisions of the covenants hereinabove adopted by reference.

Fifth: The rights and remedies hereby granted shall not exclude any other rights or remedies granted by law, and all rights and remedies granted hereunder or permitted by law shall be concurrent and cumulative. A violation of any of the covenants herein expressly set forth shall have the same effect as the violation of any covenant herein adopted by reference.

Sixth: All the provisions of this instrument shall inure to, apply to, and bind the heirs, executors, successors and assigns of Beneficiary and shall inure to, apply to, and bind the legal representatives, successors and assigns of each of the other parties hereto, respectively. Whenever used, the singular number shall include the plural, the plural the singular, and the use of any gender shall include all other genders.

Seventh: Trustor hereby assigns to the Trustee any and all rents of the above-described premises accruing after default and hereby authorizes Trustee, or a receiver to be appointed on application of Trustee or Beneficiary, without waiving or affecting the right of foreclosure or any other right hereunder, to take possession of the premises at any time after there is a default in the payments of said debt or in the performance of any of the obligations herein contained, and to rent the premises for the account of Beneficiary. At any Trustee's Sale held hereunder Trustee shall sell the property herein described as a single unit unless herein otherwise specifically directed and at such sale is hereby authorized to bid for Beneficiary or other absent person.

Eighth: It is hereby expressly agreed that the trust created hereby is irrevocable by Trustor.

Ninth: This Deed of Trust is second and subordinate, however, to that certain Deed of Trust recorded as document No. 68352, Ormsby County, Nevada records.

In Witness Whereof, Trustors have hereunto set their hands as of the day and year first hereinabove written.

MEL MATLEAN.

DENISE L. MATLEAN.

STATE OF NEVADA,
County of Ormsby:

On this _____ day of _____, 1968, personally appeared before me, a Notary Public in and for said county and state, Mel Matlean and Denise L. Matlean known to me to be the persons described in and who executed the foregoing instrument, and they, and each of them, duly acknowledged to me that they executed the same freely and voluntarily and for the uses and purposes therein mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal at my office the day and year in this certificate first above written.

_____, _____,
Notary Public.

()





